AUG 26 1987

No. 87-188

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RANDOM HOUSE, INC. and IAN HAMILTON,

Petitioners,

vs.

JEROME D. SALINGER, a/k/a J.D. SALINGER,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF ORGANIZATION OF AMERICAN HISTORIANS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI AND BRIEF AMICUS CURIAE

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BRIEF AMICUS CURIAE

The Organization of American Historians ("OAH") hereby respecttully moves for leave to file the attached brief amicus curiae in this case. The consents

of the attorneys for petitioners Random House, Inc. and Ian Hamilton have been obtained. The consent of the attorney for the respondent was requested but refused.

The interest of the OAH in this case arises from the fact that the OAH is the leading professional organization for scholars involved in the study of United States history. Since its members regularly research, write and publish scholarly articles and books on historical subjects, frequently drawing material from unpublished copyright protected sources, the OAH is necessarily concerned with the scope of the fair use doctrine.

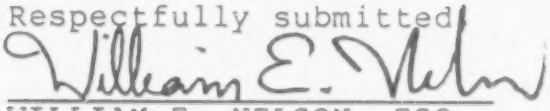
The OAH requests permission to file its brief amicus curiae in its position as the representative of professional American Scholars. Due to its position, the OAH is able to view this particular case from a broader perspective in that the OAH is particularly familiar with the effects that the Second Circuit's interpretation of the fair use doctrine would have on non-parties - specifically American researchers and scholars. If the arguments of the OAH are accepted, this Court will issue a writ of certiorari to review the opinion of

the United States Court of Appeals

for the Second Circuit.

Dated: New York, New York
August 21 , 1987

Respectfully submitted,



WILLIAM E. NELSON, ESQ.

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Interest of the Organization of American Historians

The Organization of American Historians ("OAH"), which has its executive offices at 112 North

Bryan Street, Bloomington, Indiana 47401, represents approximately 8,700 individual members and 3,500 institutional members. Founded in 1907, the OAH is the leading professional organization for scholars involved in the study of United States history. The OAH also publishes the journal of record in this subject area -- The Journal of American History. The individual members of the OAH are largely engaged in teaching and research at colleges and universities throughout the United States, although numerous independent scholars are members as well. Many individual members regularly research, write and publish scholarly articles and

books on historical subjects. In the course of their work, these members frequently draw material from unpublished, copyright protected sources and often quote or paraphrase such materials, in reliance on the doctrine of fair use. Thus, the scope of the fair use doctrine is of vital concern to many of OAH's members.

Because its individual members are both copyright owners and scholars who draw on unpublished copyrighted material, OAH has a vital interest in seeking review of the lower court's decision, which if left undisturbed would upset the proper balance between the Copyright Act and the First Amendment.

We support the petition for certiorari, but do not here take up the "merits." Petitioners have consented to the filing of this brief; Respondent has refused consent.

Argument: Reasons for Granting the Writ

The Executive Board of the Organization of American Historians wishes to express concern over the reasoning of the United States Court of Appeals for the Second Circuit in its decision in the case of Jerome D. Salinger v. Random House, Inc. and Ian Hamilton, decided January 29, 1987.

American researchers have traditionally enjoyed broadly construed rights to paraphrase

large portions and to quote significant segments of unpublished manuscript materials deposited in scholarly libraries and archives open to the public, under the doctrine of "fair use" of copyrighted material.

The Second Circuit's interpretation of the "fair use" doctrine in Salinger swings so far in the direction of copyright protection that, if allowed to stand, it would severely limit the historical use of archival manuscript material. The Salinger theory of fair use would have a potentially chilling effect on scholarly publication in the United States.

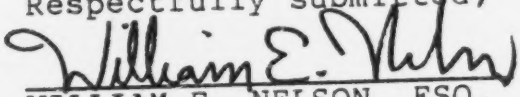
It is not our understanding that the Congress intended (in the Copyright Act of 1976) to change the time-honored American rules of professional behavior for historical researchers.

Conclusion

We believe that the scholarly community will join us in urging that the traditionally broad, yet legally and morally responsible, rule of "fair use" be restored. The issue is one of great legal and practical importance. For the foregoing reasons, a writ of certiorari should issue to review the opinion of the United States Court of Appeals for the Second Circuit.

Dated: New York, New York
August 21, 1987

Respectfully submitted,



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